

REMARKS

Claims 4, 6-8, 10, 12, and 14-29 are pending and stand ready for further action on the merits.
Claims 1-3, 5, 9, 11 and 13 have been cancelled.

Support for the carbon atom range of "R" in claims 6 and 8 can be found on page 11, line 8 of the specification.

Support for the surfactants of claims 23-25 and 27 can be found on pages 16 and 17.

Claim 4 has been amended so as not to be broader in scope than the claim from which it depends.

The dependencies of claims 12, 14, 15 and 19-21 have been amended.

New claim 25 finds support in claim 6.

New claim 27 finds support in claim 8.

New claim 28 finds support in claim 8 and the recitation of treating the phylloplanes of a plant can be found in the first paragraph on page 1 of the present specification.

No new matter has been added by way of the above-amendment.

[II] Issues under 35 USC § 102

The Examiner has imposed a new rejection over claims 4, 6-8, 12, 14, 15, 17 and 19-21 under 35 USC § 102(b) as being anticipated by Kim (US 5,674,897). Applicants respectfully traverse the rejection.

As the MPEP directs, all the claim limitations must be taught or suggested by the prior art to establish a *prima facie* case of anticipation. See MPEP § 2131. Applicants respectfully submit that Kim fails to teach or fairly suggest all of the limitations of independent claims 6 and 8.

Kim teaches the controlling of nematodes by applying C8-C14 fatty acid compounds to "animals, plants or to the situs of plants needing nematode control." See column 4, lines 28-31 of Kim. Accordingly, Kim fails to anticipate instant claims 6 and 8 which require that the plant

activating agent of formula (II) contains compounds wherein R is an alkyl or alkenyl group having 15-19 carbon atoms.

In view of the fact that Kim fails to teach or fairly suggest all the claim limitations of instant claims 6 and 8, a *prima facie* case of anticipation cannot be said to exist. Furthermore, claims 4, 7, 12, 14, 15, 17, 19, 23 and 24 which depend (directly or indirectly) from claim 6 or 8 are allowable over Kim. As such, withdrawal of the rejection is respectfully requested.

Furthermore, Applicants respectfully submit that new independent claims 25, 27 and 28 are patentably distinct from Kim.

With respect to claims 25 and 27, these claims list a specific set of surfactants which are neither taught nor suggested by Kim. The only description of the use of a surfactant by Kim is in Example 4 which is as follows:

The active ingredients can be mixed with a surfactant such as Igepal CO 630 or any other member of the same family of surfactants having greater or lesser degrees of ethoxylation. These surfactants are well known to those skilled in the art. (Emphasis added. See column 8, lines 58-62.)

As shown in the attached Handbook of Industrial Surfactants (Ash et al., Gower Publishing Company, pages 258 and 708, 1992), Igepal CO 630 is a nonylphenylether having 9 moles of added ethylene oxide units, also called Nonoxynol-9. At page 258 of the Handbook, Igepal CO 630 is described as being Nonoxynol-9. At page 708 of the Handbook, Nonoxynol-9 is described. Accordingly, instant claims 25 and 27 which require that the surfactant is at least one selected from the group consisting of an ester group-containing nonionic surfactant, anionic surfactant, cationic surfactant and amphoteric surfactant are patentably distinct from Kim.

Lastly, new claim 28 is patentably distinct from Kim, since Kim fails to teach or fairly suggest spraying the composition on phylloplanes of the plant. The Examiner will note that Kim pipettes (which is not spraying, as presently claimed) a fatty acid composition onto leaves as a COMPARATIVE example in column 8, line 7. Kim teaches that the pipetted composition applied to the leaves "causes obvious wilting." Accordingly, the artisan would not be motivated to spray the

composition on phylloplanes of the plant, as claimed in present claim 28. As such, present claim 28 is patentably distinct from Kim.

[II] Allowed Claims

Applicants note with appreciation that the Examiner has indicated that claims 10, 16, 18 and 22 are allowed.

Conclusion

In view of the above comments, Applicants respectfully submit that the claims are in condition for allowance. A Notice to such effect is earnestly solicited.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact **Garth M. Dahlen, Ph.D., Esq.** (Reg. No. 43,575) at the telephone number of the undersigned below, to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Respectfully submitted,

BIRCH, STEWART, KOLASCH & BIRCH, LLP

By 
John W. Bailey, #32,881

JWB/GMD/mua
0425-0836P

P.O. Box 747
Falls Church, VA 22040-0747
(703) 205-8000

Attachment: Handbook of Industrial Surfactants (Ash et al., Gower Publishing Company, pages 258 and 708, 1992)